



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-General

Brussels,
TAXUD.E2/Svdv – taxud.e.2(2020)4976884

Mrs Vicky CANN
CEO
Rue d'Edimbourg 26
BE - 1050 Brussels

@ .

(by e-mail and registered mail)

Dear Mrs Cann,

Subject: Your application for access to documents – Ref GestDem No 2020/4014

We refer to your e-mail dated 2 July 2020, in which you make a request for access to documents, registered under the above-mentioned reference number.

You request access to the following documents:

“a list of all lobby meetings (including phone calls, conference calls etc.) since 1 January 2019 where the EU’s Digital Services Tax proposal, or the OECD’s negotiations on a similar tax, were discussed. The list should include the names of the individuals and organisations participating; the date; the agenda; and any minutes/notes produced. I would additionally like to receive any emails or other correspondence related to proposals for a Digital Services Tax received or sent since 1 January 2019”.

Following our e-mail exchange of 30-31 July, we made a list (see **annex**) of lobbying meetings held between 1 January 2019 and 1 July 2020 (your request was registered on 2 July 2020) with the (former) Commissioner, Members of his Cabinet and the Director-General of DG Taxation and Customs Union (TAXUD). Lobby meetings held with the staff of DG TAXUD are also included.

The list with documents (24 in total) identified are in **annex** to this letter and are grouped per meeting. Be informed that not for all these meetings minutes are available.

Your application has been dealt with in accordance with Regulation 1049/2001 on public access to Commission documents. The third parties were consulted as concerns the e-mails and letters originating from them (unless the letter was already publicly available). In particular, they have been consulted because personal data of their representatives and staff is mentioned in their documents.

1) Meeting Commissioner Gentiloni with Facebook Ireland Ltd on 24/01/2020

Doc 1 - e-mail 16/1/2020: meeting with representatives of Facebook

Following from Regulation (EC) No 1049/2001 and based on the consultation with Facebook, we have come to the conclusion that the document may be disclosed. Some references to persons' names and other personal data have been redacted (see below under *Personal data*).

2) Meeting Commissioner Gentiloni with Booking.com BV on 23/01/2020

Doc 2 - e-mail dated 19/12/2020: meeting with representatives of Booking.com

Doc 3 - letter of Booking.com dated 18/12/2020

Following from Regulation (EC) No 1049/2001 and based on the consultation with Booking.com, we have come to the conclusion that the documents may be disclosed. Some references to persons' names and other personal data have been redacted (see below under *Personal data*).

3) Meeting Commissioner Gentiloni with Apple Inc. on 23/01/2020

Doc 4 - e-mail dated 13/12/2020: meeting with representatives of Apple Inc.

Doc 5 - letter of Apple Inc. dated 6/2/2020

Doc 6 - Letter of Commissioner Gentiloni dated 17/2/2020

Following from Regulation (EC) No 1049/2001 and based on the consultation with Apple Inc., we have come to the conclusion that the document may be partially disclosed.

Apple Inc. did not object to the disclosure of the e-mail and the letter relating to the meeting with the Apple Inc. representatives, provided that indications about the travel schedule of the CEO were redacted in accordance with Article 4(1) (b) of Regulation (EC) No 1049/2001. All personally identifiable data have been redacted (see below under *Personal data*)

4) Meeting of Cabinet Gentiloni with Prosus on 05.06.2020

Doc 7- Prosus e-mail exchange from 30 June 2020

Doc 8 - Slides EC-Prosus Naspers business presentation in context of digital taxation;

Doc 9 - Prosus views on taxing the digital economy 24 July 2020

Following from Regulation (EC) No 1049/2001 and based on the consultation with Prosus, we have come to the conclusion that the document may be disclosed. Some references to persons' names and other personal data have been redacted (see below under *Personal data*).

5) Meeting of Cabinet Gentiloni with Amazon Europe Core on 03.06.2020

I regret to inform you that no documents are held of this teleconference.

6) Meeting of former Commissioner Moscovici with Booking.com BV on 23/01/2019

Doc 10 - letter of Booking.com dated 3 April 2019

Following from Regulation (EC) No 1049/2001 and based on the consultation with Booking.com, we have come to the conclusion that the documents may be disclosed. Some references to personal data have been redacted (see below under *Personal data*).

7) Meeting of former Commissioner Moscovici with UNI Europe on 24/07/2019

We regret to inform you that the historical archives did not identify any documents.

8) Meeting of Cabinet Moscovici with Allegro.pl on 24.01.2019

9) Meeting of Director General S. Quest with Allegro.pl on 24.01.2019

Doc 11 - Report meeting DG TAXUD - Allegro (Digital and VAT e-commerce)

Doc 12 - annex Allegro paper (presentation)

Both meetings 8 and 9 were held on the same day and the minutes (*doc 11*) covers both meetings.

Following from Regulation (EC) No 1049/2001, and based on the consultation with Allegro, we have come to the conclusion that the *document 11 and 12* may be partially disclosed.

Allegro did not object to the partial disclosure of the presentation, provided that specific commercial information and the personal data were redacted (see below under *Personal data*). Accordingly, the commercial information in the minutes has also been redacted.

Access to these parts of the documents cannot be granted in accordance with the exception laid down in the first indent of Article 4 (2) of Regulation 1049/2001, which stipulates that “*the institutions shall refuse access to a document where disclosure would undermine the protection of the commercial interests of a natural or legal person, including intellectual property, (...) unless there is an overriding public interest in disclosure*”.

Please note further that there is no overriding public interest in disclosure of these parts of the documents which would outweigh the harm disclosure would cause to the interests protected by the invoked exceptions. It is considered that this risk is foreseeable and not purely hypothetical.

10) Meetings 10 to 17: Meetings with DG TAXUD officials (staff)

The meetings 10 to 17 between DG TAXUD officials and lobbyists cover exchange of views on digital taxation. These meetings cover documents *Doc 13 to 24*.

For all these meetings there is a flash report/minutes. These minutes can be disclosed expunged from personal data.

For some meetings the third party provided a position paper. Some papers are already publicly available on the respective websites of these organisations (EACA, ETNO-GSMA). For the papers which appeared not be publicly available the third parties were consulted (VDZ/BDZV). The latter could agree with the disclosure, provided that personal data would be redacted.

Following from Regulation (EC) No 1049/2001 and based on the consultation with the third parties, we have come to the conclusion that the documents may be disclosed. Some references to persons' names and other personal data have been redacted (see below under *Personal data*).

Personal data

The documents to which you are granted access contain personal data.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing *documents 1 to 7, 9 to 13, 16 to 21, 23 and 24* expunged from these personal data (Commission/company staff names and functions, handwritten signatures, telephone numbers and office addresses).

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 2018/1725. Pursuant to Article 9(1)(b) of Regulation 2018/1725, '*personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests*'.

Disclaimer

In view of the nature of the documents, we would like to stress that Commission officials draft reports for internal use. These reports are usually of value only for a limited time. It solely reflects the services' interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content. Therefore, they constitute a subjective view of the contents of the meetings covered and cannot in any way be regarded as official minutes of the meeting. It does not reflect the position of the Commission and cannot be quoted as such.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Confirmatory

In case you would disagree with the overall assessment of the documents or with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/067
B-1049 Brussels

or by email to: sg-xxxxxxx@xx.xxxxxx.xx

Yours faithfully,

Gerassimos THOMAS

Annexes: as stated above